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SECURITY INFORMATION

H-2298

OGC HAS REVIEWED.

13 June 1953

MEMORANDUM FOR: Deputy Director (Plans)

SUBJECT : Secrecy Agreement

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1. I refer to the news item you sent to me on 11 June concerning the refusal of [REDACTED] to testify before the Senate Subcommittee on the grounds that he had signed a secrecy agreement about his OSS work. I agree it is unfortunate the news item reported Senator Jenner as treating such a claim lightly, but, in our opinion, the Senator was technically correct in his position. Under normal circumstances a witness questioned about information he believed might be confidential could plead such a secrecy agreement in order to gain time for instructions or guidance from the proper authority. A tribunal or committee could be expected to withhold the questions for a reasonable time for the witness to get such guidance, but the secrecy agreement of itself does not create a privileged condition. Refusal to testify must be based on the existence of confidential material necessarily involved in the answers desired.

2. The secrecy agreement has the following main purposes:

a. It has a valuable psychological effect as most people do not treat lightly a formal undertaking of that nature. (That is why it is couched in formal legal wording.)

b. It may be a basis for discharge of an employee who violates its terms. In some cases involving security discharges it may have considerable weight in persuading the employee to submit a resignation.

c. It may be of crucial importance in a prosecution under the Espionage Act as determining guilty knowledge or intent.

d. It serves as a reminder to an individual called before a court or a congressional committee that he should obtain clearance from the appropriate governmental authorities on what matters within his personal knowledge are still confidential.

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3. You will recall our difficulty in Seattle last fall when the Federal Court felt we had no valid claim of privilege because material about which our witnesses were to testify had largely been published. The Court would not accept our position that it was a confidential relationship that needed protection and wished demonstration that there was actual confidential information involved. Similarly, a congressional committee would not accept a witness' statement that he has general instructions not to testify. Instructions must be specific and must be based on the grounds that the information sought is of a confidential nature and relates to matters in the fields relegated by the Constitution to the Executive arm of the Government.

4. In the case of OSS witnesses, I feel that technically the clearance or instructions to witnesses should come from the Department of Defense since OSS, as you know, was created by a military order of the President and was under the Joint Chiefs even though it was a civilian agency in other respects.

5. In short, Senator Jenner's position would tend to weaken the psychological effect of the oath but does not constitute a basic change in regard to secrecy agreements.

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LAWRENCE R. HOUSTON
General Counsel

cc: Inspector General
Director of Security

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